IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

Crl.MC.No. 330 of 2007()

CC.641/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II,PATHANAMTHITTA

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PETITIONER:

GIGI P.JOSE, PUTHETTUPADAVIL HOUSE,
NEYYASSERY P.O., THODUPUZHA.

BY ADV. SRI.SHAIJAN C.GEORGE
SRI.JOHN VIPIN
SMT.S.A.SHERLY
SMT.K.K.THULACY BHAI
SMT.SAJITHA GEORGE

RESPONDENTS:

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1. RAGAM S.MOHAN, AGED 26 YEARS,
SWARAJ, PATHANAMTHITTA REPD. BY HER POWER
OF ATTORNEY HOLDER, SANTHI MOHAN,
AGED 45 YEARS, SWARAJ, PATHANAMTHITTA.

2. STATE OF KERALA, REPD. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.330 of 2007

Dated this the 13th day of February, 2007

ORDER

The petitioner faces indictment in a prosecution under Section 138 of the N.I Act. Signature in the cheque is admitted. The notice of demand did evoke a reply, but a vague one, in which it is stated that there was no transaction between the petitioner and the complainant. It is also suggested that the complainant may have come into possession of the signed cheque somehow.

2. Complaint was filed. Cognizance was taken. Trial is in progress. The petitioner wanted the cheque to be sent to the expert. What is the purpose ? The petitioner contended that the blank signed cheque was handed over years earlier and that the complainant is now making use of such blank signed cheque handed over years earlier, that is about a decade back. The petitioner wanted the cheque to be examined by the expert to ascertain the age difference between the signature in the cheque and the other writings in the cheque. The learned Magistrate by the impugned order rejected the said prayer. The petitioner claims to be aggrieved by that order. As a revision is not maintainable against the said order, the same being interlocutory one, the petitioner has entered this Court through the door of Section 482 Cr.P.C. Counsel prays that the dismissal of the

petition is unjustified, as it affects the right and opportunity of the petitioner to establish his innocence. In these circumstances, the impugned order may be set aside and the learned Magistrate may be directed to send the cheque to the expert.

3. I must alertly consider the nature and quality of the jurisdiction that I am called upon to exercise. The law frowns on the challenge against interlocutory orders, which would retard the progress of the trial and that precisely explains why the impugned order is expressly held to be not revisable under Section 397 (2) Cr.P.C. I do not want to encumber the records with any final finding on merits on the acceptability of the request of the petitioner. Suffice it to say that I am not satisfied that at this stage and invoking the powers under Section 482 Cr.P.C, the impugned order warrants any interference. The petitioner's right to challenge the impugned order if necessary along with the judgment to be passed by the trial court ultimately shall remain unfettered.

(R.BASANT, JUDGE)

rtr/-